IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9715 of 1999
with
SPECIAL CIVIL APPLICATION No. 9717 of 1999
with
SPECIAL CIVIL APPLICATION No 9552 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANJAYKUMAR PRABHUBHAI BERVA

Versus

COMMISSIONER OF POLICE

Appearance:
MR BK DAVE for Petitioner
MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/03/2000

COMMON ORAL JUDGEMENT

#. As these matters relate to detenues who have been detained in connection with the same offences and same incidents, at the request of learned advocates for parties, they are disposed off by this common judgment.

#. The petitioners have been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Ahmedabad City, Ahmedabad, in exercise of powers under Section 3(2) of the PASA Act, dated August 21, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration 6 offences registered against the petitioner in Special Civil Application No. 9552 of 1999 and 5 offences registered against the petitioners in Special Civil Application Nos. 9715 of 1999 and 9717 of 1999 with different police stations. The detaining authority also took into consideration the statements of two anonymous witnesses in respect of two incidents that occurred on July 20, 1999 and July 27, 1999 and came to conclusion that the petitioners are "dangerous persons", that their activities are detrimental to public order, that fear expressed by the witnesses qua the petitioners was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. The petitioners have challenged the orders of detention on various counts. However, learned advocate for the petitioner has restricted his arguments to the fact that the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under Section 9(2) of the PASA Act, cannot be considered as genuine. In order to substantiate this submission, learned counsel submitted that the statements of two anonymous witnesses were recorded on August 20, 1999, which were verified by the detaining authority on August 21, 1999 and the orders of detention are passed on August 21, 1999. Learned counsel submitted, therefore, that there was no time for the detaining authority to give consideration to the aspect of correctness and genuineness of the facts stated by the witnesses and the fear expressed by the witnesses, respectively, in their statements. The exercise of powers under Section 9(2) of the PASA Act is improper and has resulted into denial of right of making an effective representation as contemplated under Article 22 (5) of the Constitution. Learned counsel for the petitioners therefore, submitted

that, in light of the decision of a Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat & Ors. 1993 (2) GLR 1659, these petitions may be allowed.

#. Mr. K.T.Dave, learned Assistant Government Pleader, has opposed these petitions. He, however, does not dispute the factual aspect of the verification of the statements having been made on August 21, 1999 and the order having been passed on the same day i.e. on August 21, 1999.

#. It is clear from the grounds of detention that the detaining authority has taken into consideration the statements of two anonymous witnesses. The authority came to a conclusion that the fear expressed by these witnesses is correct and genuine and, therefore, the authority exercised powers under Section 9(2) of the PASA Act by not disclosing the identity of the witnesses. This Court is at loss to appreciate how the detaining authority could have arrived at this conclusion in such short spell. The detaining authority has not filed any affidavit-in-reply. It is, therefore, not possible to know as to what were the factors and material considered by the detaining authority besides the statements of the anonymous witnesses to come to conclusion that the fear expressed by the witnesses was genuine, that the incidents stated by the witnesses were correct and that there was need for exercise of powers under Section 9(2) of the PASA Act.

#. Similar such situation arose before a Division Bench of this Court in the case of Kalidas Chandubhai Kahar (supra), where the statements were verified on 16th October, 1992 and the order was passed on 17th October, 1992 and the Division Bench said that exercise of powers under Section 9(2) of the PASA Act was improper. This improper exercise of powers under Section 9(2) of the PASA Act was held to be detrimental to the right of the detenue of making an effective representation contemplated under Article 22(5) of the Constitution. The order of detention was, therefore, quashed. The facts of the present case squarely fall in line with the facts of that case. The orders of detention, therefore stand vitiated in the instant case as well and the petitions deserve to be allowed on this count alone.

#. In view of the above discussion, the all the three petitions are allowed. The impugned orders of detention dated August 21, 1999 passed against the detenues Sanjaykumar Prabhubhai Berva in Spl.C.A. No. 9715/99,

Mahendrakumar Omprakash Dohra in Spl.C.A.No. 9717/99 and Sunil @ Lalo Narayansing Nagar in Spl.C.A.No. 9552/99 are hereby quashed. The detenues are ordered to be set at liberty forthwith, if not required in any other matter. Rule in all three petitions is made absolute with no orders as to costs.

[A.L.DAVE, J.]

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